
SUBSTITUTE HOUSE BILL 2715

State of Washington

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2008 Regular Session

By House Public Safety & Emergency Preparedness (originally sponsored by Representatives Barlow, Hurst, Lantz, Upthegrove, Conway, Morrell, Miloscia, Kenney, Williams, Loomis, Haigh, Simpson, VanDeWege, and Kelley)

READ FIRST TIME 02/04/08.

1 AN ACT Relating to enhancing the penalty for sex offenses committed
2 in a school protection zone; amending RCW 9.94A.533 and 9.94A.728;
3 reenacting and amending RCW 9.94A.030; adding a new section to chapter
4 9.94A RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
7 to read as follows:

8 (1) In a prosecution for a sex offense, the prosecuting attorney
9 may file a special allegation that the offense was committed in a
10 school protection zone whenever sufficient admissible evidence exists,
11 which, when considered with the most plausible, reasonably foreseeable
12 defense that could be raised under the evidence, would justify a
13 finding by a reasonable fact-finder that the offense was committed in
14 a school protection zone.

15 (2) Once a special allegation has been made under this section, the
16 state has the burden to prove beyond a reasonable doubt that the
17 offense was committed in a school protection zone. If a jury is had,
18 the jury shall, if it finds the defendant guilty, also find a special

1 verdict as to whether the offense was committed in a school protection
2 zone. If no jury is had, the court shall make a finding of fact as to
3 whether the offense was committed in a school protection zone.

4 (3) The prosecuting attorney may not withdraw a special allegation
5 under this section without approval of the court through an order of
6 dismissal of the special allegation. The court may not dismiss the
7 special allegation unless it finds that the order is necessary to
8 correct an error in the original charging decision or unless there are
9 evidentiary problems that make proving the special allegation doubtful.

10 (4) If there has been a special verdict or finding that a sex
11 offense was committed in a school protection zone under this section:

12 (a) The court may impose a fine up to twice the fine authorized by
13 law; and

14 (b) The statutory maximum sentence for the offense shall be twice
15 the statutory maximum sentence designated in RCW 9A.20.021.

16 **Sec. 2.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to read
17 as follows:

18 (1) The provisions of this section apply to the standard sentence
19 ranges determined by RCW 9.94A.510 or 9.94A.517.

20 (2) For persons convicted of the anticipatory offenses of criminal
21 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
22 standard sentence range is determined by locating the sentencing grid
23 sentence range defined by the appropriate offender score and the
24 seriousness level of the completed crime, and multiplying the range by
25 seventy-five percent.

26 (3) The following additional times shall be added to the standard
27 sentence range for felony crimes committed after July 23, 1995, if the
28 offender or an accomplice was armed with a firearm as defined in RCW
29 9.41.010 and the offender is being sentenced for one of the crimes
30 listed in this subsection as eligible for any firearm enhancements
31 based on the classification of the completed felony crime. If the
32 offender is being sentenced for more than one offense, the firearm
33 enhancement or enhancements must be added to the total period of
34 confinement for all offenses, regardless of which underlying offense is
35 subject to a firearm enhancement. If the offender or an accomplice was
36 armed with a firearm as defined in RCW 9.41.010 and the offender is
37 being sentenced for an anticipatory offense under chapter 9A.28 RCW to

1 commit one of the crimes listed in this subsection as eligible for any
2 firearm enhancements, the following additional times shall be added to
3 the standard sentence range determined under subsection (2) of this
4 section based on the felony crime of conviction as classified under RCW
5 9A.28.020:

6 (a) Five years for any felony defined under any law as a class A
7 felony or with a statutory maximum sentence of at least twenty years,
8 or both, and not covered under (f) of this subsection;

9 (b) Three years for any felony defined under any law as a class B
10 felony or with a statutory maximum sentence of ten years, or both, and
11 not covered under (f) of this subsection;

12 (c) Eighteen months for any felony defined under any law as a class
13 C felony or with a statutory maximum sentence of five years, or both,
14 and not covered under (f) of this subsection;

15 (d) If the offender is being sentenced for any firearm enhancements
16 under (a), (b), and/or (c) of this subsection and the offender has
17 previously been sentenced for any deadly weapon enhancements after July
18 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
19 (4)(a), (b), and/or (c) of this section, or both, all firearm
20 enhancements under this subsection shall be twice the amount of the
21 enhancement listed;

22 (e) Notwithstanding any other provision of law, all firearm
23 enhancements under this section are mandatory, shall be served in total
24 confinement, and shall run consecutively to all other sentencing
25 provisions, including other firearm or deadly weapon enhancements, for
26 all offenses sentenced under this chapter. However, whether or not a
27 mandatory minimum term has expired, an offender serving a sentence
28 under this subsection may be granted an extraordinary medical placement
29 when authorized under RCW 9.94A.728(4);

30 (f) The firearm enhancements in this section shall apply to all
31 felony crimes except the following: Possession of a machine gun,
32 possessing a stolen firearm, drive-by shooting, theft of a firearm,
33 unlawful possession of a firearm in the first and second degree, and
34 use of a machine gun in a felony;

35 (g) If the standard sentence range under this section exceeds the
36 statutory maximum sentence for the offense, the statutory maximum
37 sentence shall be the presumptive sentence unless the offender is a
38 persistent offender. If the addition of a firearm enhancement

1 increases the sentence so that it would exceed the statutory maximum
2 for the offense, the portion of the sentence representing the
3 enhancement may not be reduced.

4 (4) The following additional times shall be added to the standard
5 sentence range for felony crimes committed after July 23, 1995, if the
6 offender or an accomplice was armed with a deadly weapon other than a
7 firearm as defined in RCW 9.41.010 and the offender is being sentenced
8 for one of the crimes listed in this subsection as eligible for any
9 deadly weapon enhancements based on the classification of the completed
10 felony crime. If the offender is being sentenced for more than one
11 offense, the deadly weapon enhancement or enhancements must be added to
12 the total period of confinement for all offenses, regardless of which
13 underlying offense is subject to a deadly weapon enhancement. If the
14 offender or an accomplice was armed with a deadly weapon other than a
15 firearm as defined in RCW 9.41.010 and the offender is being sentenced
16 for an anticipatory offense under chapter 9A.28 RCW to commit one of
17 the crimes listed in this subsection as eligible for any deadly weapon
18 enhancements, the following additional times shall be added to the
19 standard sentence range determined under subsection (2) of this section
20 based on the felony crime of conviction as classified under RCW
21 9A.28.020:

22 (a) Two years for any felony defined under any law as a class A
23 felony or with a statutory maximum sentence of at least twenty years,
24 or both, and not covered under (f) of this subsection;

25 (b) One year for any felony defined under any law as a class B
26 felony or with a statutory maximum sentence of ten years, or both, and
27 not covered under (f) of this subsection;

28 (c) Six months for any felony defined under any law as a class C
29 felony or with a statutory maximum sentence of five years, or both, and
30 not covered under (f) of this subsection;

31 (d) If the offender is being sentenced under (a), (b), and/or (c)
32 of this subsection for any deadly weapon enhancements and the offender
33 has previously been sentenced for any deadly weapon enhancements after
34 July 23, 1995, under (a), (b), and/or (c) of this subsection or
35 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
36 weapon enhancements under this subsection shall be twice the amount of
37 the enhancement listed;

1 (e) Notwithstanding any other provision of law, all deadly weapon
2 enhancements under this section are mandatory, shall be served in total
3 confinement, and shall run consecutively to all other sentencing
4 provisions, including other firearm or deadly weapon enhancements, for
5 all offenses sentenced under this chapter. However, whether or not a
6 mandatory minimum term has expired, an offender serving a sentence
7 under this subsection may be granted an extraordinary medical placement
8 when authorized under RCW 9.94A.728(4);

9 (f) The deadly weapon enhancements in this section shall apply to
10 all felony crimes except the following: Possession of a machine gun,
11 possessing a stolen firearm, drive-by shooting, theft of a firearm,
12 unlawful possession of a firearm in the first and second degree, and
13 use of a machine gun in a felony;

14 (g) If the standard sentence range under this section exceeds the
15 statutory maximum sentence for the offense, the statutory maximum
16 sentence shall be the presumptive sentence unless the offender is a
17 persistent offender. If the addition of a deadly weapon enhancement
18 increases the sentence so that it would exceed the statutory maximum
19 for the offense, the portion of the sentence representing the
20 enhancement may not be reduced.

21 (5) The following additional times shall be added to the standard
22 sentence range if the offender or an accomplice committed the offense
23 while in a county jail or state correctional facility and the offender
24 is being sentenced for one of the crimes listed in this subsection. If
25 the offender or an accomplice committed one of the crimes listed in
26 this subsection while in a county jail or state correctional facility,
27 and the offender is being sentenced for an anticipatory offense under
28 chapter 9A.28 RCW to commit one of the crimes listed in this
29 subsection, the following additional times shall be added to the
30 standard sentence range determined under subsection (2) of this
31 section:

32 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
33 (a) or (b) or 69.50.410;

34 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
35 (c), (d), or (e);

36 (c) Twelve months for offenses committed under RCW 69.50.4013.

37 For the purposes of this subsection, all of the real property of a

1 state correctional facility or county jail shall be deemed to be part
2 of that facility or county jail.

3 (6) An additional twenty-four months shall be added to the standard
4 sentence range for any ranked offense involving a violation of chapter
5 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
6 9.94A.605. All enhancements under this subsection shall run
7 consecutively to all other sentencing provisions, for all offenses
8 sentenced under this chapter.

9 (7) An additional two years shall be added to the standard sentence
10 range for vehicular homicide committed while under the influence of
11 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
12 prior offense as defined in RCW 46.61.5055.

13 (8)(a) The following additional times shall be added to the
14 standard sentence range for felony crimes committed on or after July 1,
15 2006, if the offense was committed with sexual motivation, as that term
16 is defined in RCW 9.94A.030. If the offender is being sentenced for
17 more than one offense, the sexual motivation enhancement must be added
18 to the total period of total confinement for all offenses, regardless
19 of which underlying offense is subject to a sexual motivation
20 enhancement. If the offender committed the offense with sexual
21 motivation and the offender is being sentenced for an anticipatory
22 offense under chapter 9A.28 RCW, the following additional times shall
23 be added to the standard sentence range determined under subsection (2)
24 of this section based on the felony crime of conviction as classified
25 under RCW 9A.28.020:

26 (i) Two years for any felony defined under the law as a class A
27 felony or with a statutory maximum sentence of at least twenty years,
28 or both;

29 (ii) Eighteen months for any felony defined under any law as a
30 class B felony or with a statutory maximum sentence of ten years, or
31 both;

32 (iii) One year for any felony defined under any law as a class C
33 felony or with a statutory maximum sentence of five years, or both;

34 (iv) If the offender is being sentenced for any sexual motivation
35 enhancements under (i), (ii), and/or (iii) of this subsection and the
36 offender has previously been sentenced for any sexual motivation
37 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of

1 this subsection, all sexual motivation enhancements under this
2 subsection shall be twice the amount of the enhancement listed;

3 (b) Notwithstanding any other provision of law, all sexual
4 motivation enhancements under this subsection are mandatory, shall be
5 served in total confinement, and shall run consecutively to all other
6 sentencing provisions, including other sexual motivation enhancements,
7 for all offenses sentenced under this chapter. However, whether or not
8 a mandatory minimum term has expired, an offender serving a sentence
9 under this subsection may be granted an extraordinary medical placement
10 when authorized under RCW 9.94A.728(4);

11 (c) The sexual motivation enhancements in this subsection apply to
12 all felony crimes;

13 (d) If the standard sentence range under this subsection exceeds
14 the statutory maximum sentence for the offense, the statutory maximum
15 sentence shall be the presumptive sentence unless the offender is a
16 persistent offender. If the addition of a sexual motivation
17 enhancement increases the sentence so that it would exceed the
18 statutory maximum for the offense, the portion of the sentence
19 representing the enhancement may not be reduced;

20 (e) The portion of the total confinement sentence which the
21 offender must serve under this subsection shall be calculated before
22 any earned early release time is credited to the offender;

23 (f) Nothing in this subsection prevents a sentencing court from
24 imposing a sentence outside the standard sentence range pursuant to RCW
25 9.94A.535.

26 (9) An additional one-year enhancement shall be added to the
27 standard sentence range for the felony crimes of RCW 9A.44.073,
28 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
29 or after July 22, 2007, if the offender engaged, agreed, or offered to
30 engage the victim in the sexual conduct in return for a fee. If the
31 offender is being sentenced for more than one offense, the one-year
32 enhancement must be added to the total period of total confinement for
33 all offenses, regardless of which underlying offense is subject to the
34 enhancement. If the offender is being sentenced for an anticipatory
35 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
36 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
37 solicited another, or conspired to engage, agree, or offer to engage
38 the victim in (~~the~~) the sexual conduct in return for a fee, an

1 additional one-year enhancement shall be added to the standard sentence
2 range determined under subsection (2) of this section. For purposes of
3 this subsection, "sexual conduct" means sexual intercourse or sexual
4 contact, both as defined in chapter 9A.44 RCW.

5 (10) An additional twenty-four months shall be added to the
6 standard range for any sex offense with a special verdict or finding
7 that the offense was committed in a school protection zone under
8 section 1 of this act. An enhancement imposed under this subsection is
9 mandatory, shall be served in total confinement, and shall run
10 consecutively to all other sentencing provisions, including any other
11 enhancements imposed under this section. If the standard sentence
12 range under this subsection exceeds the statutory maximum sentence for
13 the offense: (a) The statutory maximum sentence shall be the
14 presumptive sentence unless the offender is a persistent offender; and
15 (b) the portion of the sentence representing the enhancement may not be
16 reduced.

17 **Sec. 3.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c
18 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
19 amended to read as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.

22 (1) "Board" means the indeterminate sentence review board created
23 under chapter 9.95 RCW.

24 (2) "Collect," or any derivative thereof, "collect and remit," or
25 "collect and deliver," when used with reference to the department,
26 means that the department, either directly or through a collection
27 agreement authorized by RCW 9.94A.760, is responsible for monitoring
28 and enforcing the offender's sentence with regard to the legal
29 financial obligation, receiving payment thereof from the offender, and,
30 consistent with current law, delivering daily the entire payment to the
31 superior court clerk without depositing it in a departmental account.

32 (3) "Commission" means the sentencing guidelines commission.

33 (4) "Community corrections officer" means an employee of the
34 department who is responsible for carrying out specific duties in
35 supervision of sentenced offenders and monitoring of sentence
36 conditions.

1 (5) "Community custody" means that portion of an offender's
2 sentence of confinement in lieu of earned release time or imposed
3 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
4 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
5 community subject to controls placed on the offender's movement and
6 activities by the department. For offenders placed on community
7 custody for crimes committed on or after July 1, 2000, the department
8 shall assess the offender's risk of reoffense and may establish and
9 modify conditions of community custody, in addition to those imposed by
10 the court, based upon the risk to community safety.

11 (6) "Community custody range" means the minimum and maximum period
12 of community custody included as part of a sentence under RCW
13 9.94A.715, as established by the commission or the legislature under
14 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

15 (7) "Community placement" means that period during which the
16 offender is subject to the conditions of community custody and/or
17 postrelease supervision, which begins either upon completion of the
18 term of confinement (postrelease supervision) or at such time as the
19 offender is transferred to community custody in lieu of earned release.
20 Community placement may consist of entirely community custody, entirely
21 postrelease supervision, or a combination of the two.

22 (8) "Community protection zone" means the area within eight hundred
23 eighty feet of the facilities and grounds of a public or private
24 school.

25 (9) "Community restitution" means compulsory service, without
26 compensation, performed for the benefit of the community by the
27 offender.

28 (10) "Community supervision" means a period of time during which a
29 convicted offender is subject to crime-related prohibitions and other
30 sentence conditions imposed by a court pursuant to this chapter or RCW
31 16.52.200(6) or 46.61.524. Where the court finds that any offender has
32 a chemical dependency that has contributed to his or her offense, the
33 conditions of supervision may, subject to available resources, include
34 treatment. For purposes of the interstate compact for out-of-state
35 supervision of parolees and probationers, RCW 9.95.270, community
36 supervision is the functional equivalent of probation and should be
37 considered the same as probation by other states.

38 (11) "Confinement" means total or partial confinement.

1 (12) "Conviction" means an adjudication of guilt pursuant to Titles
2 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
3 acceptance of a plea of guilty.

4 (13) "Crime-related prohibition" means an order of a court
5 prohibiting conduct that directly relates to the circumstances of the
6 crime for which the offender has been convicted, and shall not be
7 construed to mean orders directing an offender affirmatively to
8 participate in rehabilitative programs or to otherwise perform
9 affirmative conduct. However, affirmative acts necessary to monitor
10 compliance with the order of a court may be required by the department.

11 (14) "Criminal history" means the list of a defendant's prior
12 convictions and juvenile adjudications, whether in this state, in
13 federal court, or elsewhere.

14 (a) The history shall include, where known, for each conviction (i)
15 whether the defendant has been placed on probation and the length and
16 terms thereof; and (ii) whether the defendant has been incarcerated and
17 the length of incarceration.

18 (b) A conviction may be removed from a defendant's criminal history
19 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
20 a similar out-of-state statute, or if the conviction has been vacated
21 pursuant to a governor's pardon.

22 (c) The determination of a defendant's criminal history is distinct
23 from the determination of an offender score. A prior conviction that
24 was not included in an offender score calculated pursuant to a former
25 version of the sentencing reform act remains part of the defendant's
26 criminal history.

27 (15) "Day fine" means a fine imposed by the sentencing court that
28 equals the difference between the offender's net daily income and the
29 reasonable obligations that the offender has for the support of the
30 offender and any dependents.

31 (16) "Day reporting" means a program of enhanced supervision
32 designed to monitor the offender's daily activities and compliance with
33 sentence conditions, and in which the offender is required to report
34 daily to a specific location designated by the department or the
35 sentencing court.

36 (17) "Department" means the department of corrections.

37 (18) "Determinate sentence" means a sentence that states with
38 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the
2 number of actual hours or days of community restitution work, or
3 dollars or terms of a legal financial obligation. The fact that an
4 offender through earned release can reduce the actual period of
5 confinement shall not affect the classification of the sentence as a
6 determinate sentence.

7 (19) "Disposable earnings" means that part of the earnings of an
8 offender remaining after the deduction from those earnings of any
9 amount required by law to be withheld. For the purposes of this
10 definition, "earnings" means compensation paid or payable for personal
11 services, whether denominated as wages, salary, commission, bonuses, or
12 otherwise, and, notwithstanding any other provision of law making the
13 payments exempt from garnishment, attachment, or other process to
14 satisfy a court-ordered legal financial obligation, specifically
15 includes periodic payments pursuant to pension or retirement programs,
16 or insurance policies of any type, but does not include payments made
17 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
18 or Title 74 RCW.

19 (20) "Drug offender sentencing alternative" is a sentencing option
20 available to persons convicted of a felony offense other than a violent
21 offense or a sex offense and who are eligible for the option under RCW
22 9.94A.660.

23 (21) "Drug offense" means:

24 (a) Any felony violation of chapter 69.50 RCW except possession of
25 a controlled substance (RCW 69.50.4013) or forged prescription for a
26 controlled substance (RCW 69.50.403);

27 (b) Any offense defined as a felony under federal law that relates
28 to the possession, manufacture, distribution, or transportation of a
29 controlled substance; or

30 (c) Any out-of-state conviction for an offense that under the laws
31 of this state would be a felony classified as a drug offense under (a)
32 of this subsection.

33 (22) "Earned release" means earned release from confinement as
34 provided in RCW 9.94A.728.

35 (23) "Escape" means:

36 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
37 first degree (RCW 9A.76.110), escape in the second degree (RCW
38 9A.76.120), willful failure to return from furlough (RCW 72.66.060),

1 willful failure to return from work release (RCW 72.65.070), or willful
2 failure to be available for supervision by the department while in
3 community custody (RCW 72.09.310); or

4 (b) Any federal or out-of-state conviction for an offense that
5 under the laws of this state would be a felony classified as an escape
6 under (a) of this subsection.

7 (24) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
9 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
10 run injury-accident (RCW 46.52.020(4)), felony driving while under the
11 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
12 felony physical control of a vehicle while under the influence of
13 intoxicating liquor or any drug (RCW 46.61.504(6)); or

14 (b) Any federal or out-of-state conviction for an offense that
15 under the laws of this state would be a felony classified as a felony
16 traffic offense under (a) of this subsection.

17 (25) "Fine" means a specific sum of money ordered by the sentencing
18 court to be paid by the offender to the court over a specific period of
19 time.

20 (26) "First-time offender" means any person who has no prior
21 convictions for a felony and is eligible for the first-time offender
22 waiver under RCW 9.94A.650.

23 (27) "Home detention" means a program of partial confinement
24 available to offenders wherein the offender is confined in a private
25 residence subject to electronic surveillance.

26 (28) "Legal financial obligation" means a sum of money that is
27 ordered by a superior court of the state of Washington for legal
28 financial obligations which may include restitution to the victim,
29 statutorily imposed crime victims' compensation fees as assessed
30 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
31 court-appointed attorneys' fees, and costs of defense, fines, and any
32 other financial obligation that is assessed to the offender as a result
33 of a felony conviction. Upon conviction for vehicular assault while
34 under the influence of intoxicating liquor or any drug, RCW
35 46.61.522(1)(b), or vehicular homicide while under the influence of
36 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
37 obligations may also include payment to a public agency of the expense

1 of an emergency response to the incident resulting in the conviction,
2 subject to RCW 38.52.430.

3 (29) "Most serious offense" means any of the following felonies or
4 a felony attempt to commit any of the following felonies:

5 (a) Any felony defined under any law as a class A felony or
6 criminal solicitation of or criminal conspiracy to commit a class A
7 felony;

8 (b) Assault in the second degree;

9 (c) Assault of a child in the second degree;

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

13 (g) Incest when committed against a child under age fourteen;

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

23 (q) Vehicular assault, when caused by the operation or driving of
24 a vehicle by a person while under the influence of intoxicating liquor
25 or any drug or by the operation or driving of a vehicle in a reckless
26 manner;

27 (r) Vehicular homicide, when proximately caused by the driving of
28 any vehicle by any person while under the influence of intoxicating
29 liquor or any drug as defined by RCW 46.61.502, or by the operation of
30 any vehicle in a reckless manner;

31 (s) Any other class B felony offense with a finding of sexual
32 motivation;

33 (t) Any other felony with a deadly weapon verdict under RCW
34 9.94A.602;

35 (u) Any felony offense in effect at any time prior to December 2,
36 1993, that is comparable to a most serious offense under this
37 subsection, or any federal or out-of-state conviction for an offense

1 that under the laws of this state would be a felony classified as a
2 most serious offense under this subsection;

3 (v)(i) A prior conviction for indecent liberties under RCW
4 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
5 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
6 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
7 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

8 (ii) A prior conviction for indecent liberties under RCW
9 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
10 if: (A) The crime was committed against a child under the age of
11 fourteen; or (B) the relationship between the victim and perpetrator is
12 included in the definition of indecent liberties under RCW
13 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
14 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
15 through July 27, 1997.

16 (30) "Nonviolent offense" means an offense which is not a violent
17 offense.

18 (31) "Offender" means a person who has committed a felony
19 established by state law and is eighteen years of age or older or is
20 less than eighteen years of age but whose case is under superior court
21 jurisdiction under RCW 13.04.030 or has been transferred by the
22 appropriate juvenile court to a criminal court pursuant to RCW
23 13.40.110. Throughout this chapter, the terms "offender" and
24 "defendant" are used interchangeably.

25 (32) "Partial confinement" means confinement for no more than one
26 year in a facility or institution operated or utilized under contract
27 by the state or any other unit of government, or, if home detention or
28 work crew has been ordered by the court, in an approved residence, for
29 a substantial portion of each day with the balance of the day spent in
30 the community. Partial confinement includes work release, home
31 detention, work crew, and a combination of work crew and home
32 detention.

33 (33) "Persistent offender" is an offender who:

34 (a)(i) Has been convicted in this state of any felony considered a
35 most serious offense; and

36 (ii) Has, before the commission of the offense under (a) of this
37 subsection, been convicted as an offender on at least two separate
38 occasions, whether in this state or elsewhere, of felonies that under

1 the laws of this state would be considered most serious offenses and
2 would be included in the offender score under RCW 9.94A.525; provided
3 that of the two or more previous convictions, at least one conviction
4 must have occurred before the commission of any of the other most
5 serious offenses for which the offender was previously convicted; or

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
7 of a child in the first degree, child molestation in the first degree,
8 rape in the second degree, rape of a child in the second degree, or
9 indecent liberties by forcible compulsion; (B) any of the following
10 offenses with a finding of sexual motivation: Murder in the first
11 degree, murder in the second degree, homicide by abuse, kidnapping in
12 the first degree, kidnapping in the second degree, assault in the first
13 degree, assault in the second degree, assault of a child in the first
14 degree, assault of a child in the second degree, or burglary in the
15 first degree; or (C) an attempt to commit any crime listed in this
16 subsection (33)(b)(i); and

17 (ii) Has, before the commission of the offense under (b)(i) of this
18 subsection, been convicted as an offender on at least one occasion,
19 whether in this state or elsewhere, of an offense listed in (b)(i) of
20 this subsection or any federal or out-of-state offense or offense under
21 prior Washington law that is comparable to the offenses listed in
22 (b)(i) of this subsection. A conviction for rape of a child in the
23 first degree constitutes a conviction under (b)(i) of this subsection
24 only when the offender was sixteen years of age or older when the
25 offender committed the offense. A conviction for rape of a child in
26 the second degree constitutes a conviction under (b)(i) of this
27 subsection only when the offender was eighteen years of age or older
28 when the offender committed the offense.

29 (34) "Postrelease supervision" is that portion of an offender's
30 community placement that is not community custody.

31 (35) "Predatory" means: (a) The perpetrator of the crime was a
32 stranger to the victim, as defined in this section; (b) the perpetrator
33 established or promoted a relationship with the victim prior to the
34 offense and the victimization of the victim was a significant reason
35 the perpetrator established or promoted the relationship; or (c) the
36 perpetrator was: (i) A teacher, counselor, volunteer, or other person
37 in authority in any public or private school and the victim was a
38 student of the school under his or her authority or supervision. For

1 purposes of this subsection, "school" does not include home-based
2 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,
3 volunteer, or other person in authority in any recreational activity
4 and the victim was a participant in the activity under his or her
5 authority or supervision; or (iii) a pastor, elder, volunteer, or other
6 person in authority in any church or religious organization, and the
7 victim was a member or participant of the organization under his or her
8 authority.

9 (36) "Private school" means a school regulated under chapter
10 28A.195 or 28A.205 RCW.

11 (37) "Public school" has the same meaning as in RCW 28A.150.010.

12 (38) "Restitution" means a specific sum of money ordered by the
13 sentencing court to be paid by the offender to the court over a
14 specified period of time as payment of damages. The sum may include
15 both public and private costs.

16 (39) "Risk assessment" means the application of an objective
17 instrument supported by research and adopted by the department for the
18 purpose of assessing an offender's risk of reoffense, taking into
19 consideration the nature of the harm done by the offender, place and
20 circumstances of the offender related to risk, the offender's
21 relationship to any victim, and any information provided to the
22 department by victims. The results of a risk assessment shall not be
23 based on unconfirmed or unconfirmable allegations.

24 (40) "School protection zone" means the area inside a public or
25 private school, inside a school bus as defined in RCW 69.50.435,
26 within one thousand feet of a school bus route stop designated by a
27 school district, or within one thousand feet of the grounds of a public
28 or private school.

29 (41) "Serious traffic offense" means:

30 (a) Nonfelony driving while under the influence of intoxicating
31 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
32 while under the influence of intoxicating liquor or any drug (RCW
33 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
34 attended vehicle (RCW 46.52.020(5)); or

35 (b) Any federal, out-of-state, county, or municipal conviction for
36 an offense that under the laws of this state would be classified as a
37 serious traffic offense under (a) of this subsection.

1 (~~(41)~~) (42) "Serious violent offense" is a subcategory of violent
2 offense and means:
3 (a)(i) Murder in the first degree;
4 (ii) Homicide by abuse;
5 (iii) Murder in the second degree;
6 (iv) Manslaughter in the first degree;
7 (v) Assault in the first degree;
8 (vi) Kidnapping in the first degree;
9 (vii) Rape in the first degree;
10 (viii) Assault of a child in the first degree; or
11 (ix) An attempt, criminal solicitation, or criminal conspiracy to
12 commit one of these felonies; or
13 (b) Any federal or out-of-state conviction for an offense that
14 under the laws of this state would be a felony classified as a serious
15 violent offense under (a) of this subsection.
16 (~~(42)~~) (43) "Sex offense" means:
17 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
18 RCW 9A.44.130(~~(11)~~)(12);
19 (ii) A violation of RCW 9A.64.020;
20 (iii) A felony that is a violation of chapter 9.68A RCW other than
21 RCW 9.68A.080; or
22 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
23 criminal solicitation, or criminal conspiracy to commit such crimes;
24 (b) Any conviction for a felony offense in effect at any time prior
25 to July 1, 1976, that is comparable to a felony classified as a sex
26 offense in (a) of this subsection;
27 (c) A felony with a finding of sexual motivation under RCW
28 9.94A.835 or 13.40.135; or
29 (d) Any federal or out-of-state conviction for an offense that
30 under the laws of this state would be a felony classified as a sex
31 offense under (a) of this subsection.
32 (~~(43)~~) (44) "Sexual motivation" means that one of the purposes
33 for which the defendant committed the crime was for the purpose of his
34 or her sexual gratification.
35 (~~(44)~~) (45) "Standard sentence range" means the sentencing
36 court's discretionary range in imposing a nonappealable sentence.
37 (~~(45)~~) (46) "Statutory maximum sentence" means the maximum length

1 of time for which an offender may be confined as punishment for a crime
2 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
3 the crime, or other statute defining the maximum penalty for a crime.

4 ~~((46))~~ (47) "Stranger" means that the victim did not know the
5 offender twenty-four hours before the offense.

6 ~~((47))~~ (48) "Total confinement" means confinement inside the
7 physical boundaries of a facility or institution operated or utilized
8 under contract by the state or any other unit of government for twenty-
9 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

10 ~~((48))~~ (49) "Transition training" means written and verbal
11 instructions and assistance provided by the department to the offender
12 during the two weeks prior to the offender's successful completion of
13 the work ethic camp program. The transition training shall include
14 instructions in the offender's requirements and obligations during the
15 offender's period of community custody.

16 ~~((49))~~ (50) "Victim" means any person who has sustained
17 emotional, psychological, physical, or financial injury to person or
18 property as a direct result of the crime charged.

19 ~~((50))~~ (51) "Violent offense" means:

20 (a) Any of the following felonies:

21 (i) Any felony defined under any law as a class A felony or an
22 attempt to commit a class A felony;

23 (ii) Criminal solicitation of or criminal conspiracy to commit a
24 class A felony;

25 (iii) Manslaughter in the first degree;

26 (iv) Manslaughter in the second degree;

27 (v) Indecent liberties if committed by forcible compulsion;

28 (vi) Kidnapping in the second degree;

29 (vii) Arson in the second degree;

30 (viii) Assault in the second degree;

31 (ix) Assault of a child in the second degree;

32 (x) Extortion in the first degree;

33 (xi) Robbery in the second degree;

34 (xii) Drive-by shooting;

35 (xiii) Vehicular assault, when caused by the operation or driving
36 of a vehicle by a person while under the influence of intoxicating
37 liquor or any drug or by the operation or driving of a vehicle in a
38 reckless manner; and

1 (xiv) Vehicular homicide, when proximately caused by the driving of
2 any vehicle by any person while under the influence of intoxicating
3 liquor or any drug as defined by RCW 46.61.502, or by the operation of
4 any vehicle in a reckless manner;

5 (b) Any conviction for a felony offense in effect at any time prior
6 to July 1, 1976, that is comparable to a felony classified as a violent
7 offense in (a) of this subsection; and

8 (c) Any federal or out-of-state conviction for an offense that
9 under the laws of this state would be a felony classified as a violent
10 offense under (a) or (b) of this subsection.

11 (~~(+51+)~~) (52) "Work crew" means a program of partial confinement
12 consisting of civic improvement tasks for the benefit of the community
13 that complies with RCW 9.94A.725.

14 (~~(+52+)~~) (53) "Work ethic camp" means an alternative incarceration
15 program as provided in RCW 9.94A.690 designed to reduce recidivism and
16 lower the cost of corrections by requiring offenders to complete a
17 comprehensive array of real-world job and vocational experiences,
18 character-building work ethics training, life management skills
19 development, substance abuse rehabilitation, counseling, literacy
20 training, and basic adult education.

21 (~~(+53+)~~) (54) "Work release" means a program of partial confinement
22 available to offenders who are employed or engaged as a student in a
23 regular course of study at school.

24 **Sec. 4.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to
25 read as follows:

26 No person serving a sentence imposed pursuant to this chapter and
27 committed to the custody of the department shall leave the confines of
28 the correctional facility or be released prior to the expiration of the
29 sentence except as follows:

30 (1) Except as otherwise provided for in subsection (2) of this
31 section, the term of the sentence of an offender committed to a
32 correctional facility operated by the department may be reduced by
33 earned release time in accordance with procedures that shall be
34 developed and promulgated by the correctional agency having
35 jurisdiction in which the offender is confined. The earned release
36 time shall be for good behavior and good performance, as determined by
37 the correctional agency having jurisdiction. The correctional agency

1 shall not credit the offender with earned release credits in advance of
2 the offender actually earning the credits. Any program established
3 pursuant to this section shall allow an offender to earn early release
4 credits for presentence incarceration. If an offender is transferred
5 from a county jail to the department, the administrator of a county
6 jail facility shall certify to the department the amount of time spent
7 in custody at the facility and the amount of earned release time. An
8 offender who has been convicted of a felony committed after July 23,
9 1995, that involves any applicable deadly weapon enhancements under RCW
10 9.94A.533 (3) or (4), or both, shall not receive any good time credits
11 or earned release time for that portion of his or her sentence that
12 results from any deadly weapon enhancements. An offender convicted of
13 a sex offense that involves any applicable school protection zone
14 enhancement under RCW 9.94A.533(10) may not receive any earned release
15 time for the portion of his or her sentence that results from the
16 enhancement.

17 (a) In the case of an offender convicted of a serious violent
18 offense, or a sex offense that is a class A felony, committed on or
19 after July 1, 1990, and before July 1, 2003, the aggregate earned
20 release time may not exceed fifteen percent of the sentence. In the
21 case of an offender convicted of a serious violent offense, or a sex
22 offense that is a class A felony, committed on or after July 1, 2003,
23 the aggregate earned release time may not exceed ten percent of the
24 sentence.

25 (b)(i) In the case of an offender who qualifies under (b)(ii) of
26 this subsection, the aggregate earned release time may not exceed fifty
27 percent of the sentence.

28 (ii) An offender is qualified to earn up to fifty percent of
29 aggregate earned release time under this subsection (1)(b) if he or
30 she:

31 (A) Is classified in one of the two lowest risk categories under
32 (b)(iii) of this subsection;

33 (B) Is not confined pursuant to a sentence for:

34 (I) A sex offense;

35 (II) A violent offense;

36 (III) A crime against persons as defined in RCW 9.94A.411;

37 (IV) A felony that is domestic violence as defined in RCW
38 10.99.020;

1 (V) A violation of RCW 9A.52.025 (residential burglary);
2 (VI) A violation of, or an attempt, solicitation, or conspiracy to
3 violate, RCW 69.50.401 by manufacture or delivery or possession with
4 intent to deliver methamphetamine; or
5 (VII) A violation of, or an attempt, solicitation, or conspiracy to
6 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
7 (C) Has no prior conviction for:
8 (I) A sex offense;
9 (II) A violent offense;
10 (III) A crime against persons as defined in RCW 9.94A.411;
11 (IV) A felony that is domestic violence as defined in RCW
12 10.99.020;
13 (V) A violation of RCW 9A.52.025 (residential burglary);
14 (VI) A violation of, or an attempt, solicitation, or conspiracy to
15 violate, RCW 69.50.401 by manufacture or delivery or possession with
16 intent to deliver methamphetamine; or
17 (VII) A violation of, or an attempt, solicitation, or conspiracy to
18 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
19 (D) Participates in programming or activities as directed by the
20 offender's individual reentry plan as provided under RCW 72.09.270 to
21 the extent that such programming or activities are made available by
22 the department; and
23 (E) Has not committed a new felony after July 22, 2007, while under
24 community supervision, community placement, or community custody.
25 (iii) For purposes of determining an offender's eligibility under
26 this subsection (1)(b), the department shall perform a risk assessment
27 of every offender committed to a correctional facility operated by the
28 department who has no current or prior conviction for a sex offense, a
29 violent offense, a crime against persons as defined in RCW 9.94A.411,
30 a felony that is domestic violence as defined in RCW 10.99.020, a
31 violation of RCW 9A.52.025 (residential burglary), a violation of, or
32 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
33 manufacture or delivery or possession with intent to deliver
34 methamphetamine, or a violation of, or an attempt, solicitation, or
35 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
36 substance to a minor). The department must classify each assessed
37 offender in one of four risk categories between highest and lowest
38 risk.

1 (iv) The department shall recalculate the earned release time and
2 reschedule the expected release dates for each qualified offender under
3 this subsection (1)(b).

4 (v) This subsection (1)(b) applies retroactively to eligible
5 offenders serving terms of total confinement in a state correctional
6 facility as of July 1, 2003.

7 (vi) This subsection (1)(b) does not apply to offenders convicted
8 after July 1, 2010.

9 (c) In no other case shall the aggregate earned release time exceed
10 one-third of the total sentence;

11 (2)(a) A person convicted of a sex offense or an offense
12 categorized as a serious violent offense, assault in the second degree,
13 vehicular homicide, vehicular assault, assault of a child in the second
14 degree, any crime against persons where it is determined in accordance
15 with RCW 9.94A.602 that the offender or an accomplice was armed with a
16 deadly weapon at the time of commission, or any felony offense under
17 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
18 eligible, in accordance with a program developed by the department, for
19 transfer to community custody status in lieu of earned release time
20 pursuant to subsection (1) of this section;

21 (b) A person convicted of a sex offense, a violent offense, any
22 crime against persons under RCW 9.94A.411(2), or a felony offense under
23 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may
24 become eligible, in accordance with a program developed by the
25 department, for transfer to community custody status in lieu of earned
26 release time pursuant to subsection (1) of this section;

27 (c) The department shall, as a part of its program for release to
28 the community in lieu of earned release, require the offender to
29 propose a release plan that includes an approved residence and living
30 arrangement. All offenders with community placement or community
31 custody terms eligible for release to community custody status in lieu
32 of earned release shall provide an approved residence and living
33 arrangement prior to release to the community;

34 (d) The department may deny transfer to community custody status in
35 lieu of earned release time pursuant to subsection (1) of this section
36 if the department determines an offender's release plan, including
37 proposed residence location and living arrangements, may violate the
38 conditions of the sentence or conditions of supervision, place the

1 offender at risk to violate the conditions of the sentence, place the
2 offender at risk to reoffend, or present a risk to victim safety or
3 community safety. The department's authority under this section is
4 independent of any court-ordered condition of sentence or statutory
5 provision regarding conditions for community custody or community
6 placement;

7 (e) If the department denies transfer to community custody status
8 in lieu of earned early release pursuant to (d) of this subsection, the
9 department may transfer an offender to partial confinement in lieu of
10 earned early release up to three months. The three months in partial
11 confinement is in addition to that portion of the offender's term of
12 confinement that may be served in partial confinement as provided in
13 this section;

14 (f) An offender serving a term of confinement imposed under RCW
15 9.94A.670(4)(a) is not eligible for earned release credits under this
16 section;

17 (3) An offender may leave a correctional facility pursuant to an
18 authorized furlough or leave of absence. In addition, offenders may
19 leave a correctional facility when in the custody of a corrections
20 officer or officers;

21 (4)(a) The secretary may authorize an extraordinary medical
22 placement for an offender when all of the following conditions exist:

23 (i) The offender has a medical condition that is serious enough to
24 require costly care or treatment;

25 (ii) The offender poses a low risk to the community because he or
26 she is physically incapacitated due to age or the medical condition;
27 and

28 (iii) Granting the extraordinary medical placement will result in
29 a cost savings to the state.

30 (b) An offender sentenced to death or to life imprisonment without
31 the possibility of release or parole is not eligible for an
32 extraordinary medical placement.

33 (c) The secretary shall require electronic monitoring for all
34 offenders in extraordinary medical placement unless the electronic
35 monitoring equipment interferes with the function of the offender's
36 medical equipment or results in the loss of funding for the offender's
37 medical care. The secretary shall specify who shall provide the

1 monitoring services and the terms under which the monitoring shall be
2 performed.

3 (d) The secretary may revoke an extraordinary medical placement
4 under this subsection at any time;

5 (5) The governor, upon recommendation from the clemency and pardons
6 board, may grant an extraordinary release for reasons of serious health
7 problems, senility, advanced age, extraordinary meritorious acts, or
8 other extraordinary circumstances;

9 (6) No more than the final six months of the offender's term of
10 confinement may be served in partial confinement designed to aid the
11 offender in finding work and reestablishing himself or herself in the
12 community. This is in addition to that period of earned early release
13 time that may be exchanged for partial confinement pursuant to
14 subsection (2)(e) of this section;

15 (7) The governor may pardon any offender;

16 (8) The department may release an offender from confinement any
17 time within ten days before a release date calculated under this
18 section; and

19 (9) An offender may leave a correctional facility prior to
20 completion of his or her sentence if the sentence has been reduced as
21 provided in RCW 9.94A.870.

22 Notwithstanding any other provisions of this section, an offender
23 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a
24 mandatory minimum sentence of total confinement shall not be released
25 from total confinement before the completion of the listed mandatory
26 minimum sentence for that felony crime of conviction unless allowed
27 under RCW 9.94A.540, however persistent offenders are not eligible for
28 extraordinary medical placement.

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